

CHAPTER NO. 992

HOUSE BILL NO. 2380

By Representatives McDonald, Arriola, Bone, West, Curtiss, Lewis, Fowlkes, Head, Williams, Hargrove, Garrett, McDaniel, Newton, Boner, Maddox, Sands, Fitzhugh, Givens, Pleasant, Haley, Hargett, Patton, Ford, Bittle, Sargent, Dunn, Cross, Ridgeway, Mumpower, Beavers, John DeBerry, Burchett and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 2306

By Senator Rochelle

AN ACT to amend Tennessee Code Annotated, Title 41, Chapter 21, relative to financial obligations of inmates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 21 is amended by adding Sections 2 through 12 of this act as a new part.

SECTION 2. This act shall be known and may be cited as the "Inmate Financial Responsibility Act of 1998."

SECTION 3. As used in this act:

(a) "Assets" means property, tangible or intangible, real or personal, belonging to or due an inmate or former inmate including income or payments to such inmate from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, insurance benefits, or from any other source whatsoever, but does not include any of the following:

(1) The homestead of the inmate.

(2) Money received by the inmate from the State as settlement of a claim against the department by the inmate.

(3) A money judgment received by the inmate from the State as the result of a civil action in which the department was a named defendant and found to be liable.

(4) Money saved by the inmate from wages and bonuses paid the inmate while he or she was confined to a state correctional facility.

(b) "Cost of care" means the cost to the Department of Correction for providing transportation, room, board, clothing, security, medical, and other normal living expenses of inmates under the jurisdiction of the department, as determined by the Commissioner of Correction.

(c) "Department" means the Department of Correction.

(d) "State" means the State of Tennessee.

(e) "Inmate" means any person who is confined in a correctional facility under the jurisdiction of the department.

(f) "State correctional facility" means a facility or institution which houses an inmate population under the jurisdiction of the department.

(g) "Commissioner" means the Commissioner of the Department of Correction, or his/her designee.

SECTION 4.

(a) The department shall develop a form which shall be used by the department to obtain information from inmates regarding assets of the inmates.

(b) Upon being developed, the form shall be submitted to each person who, in the discretion of the department, may have sufficient assets to warrant further investigation. Such form may be submitted to any person who is an inmate as of the effective date of the Act and to any person who thereafter is sentenced to imprisonment under the jurisdiction of the department. The form may be resubmitted to an inmate by the department for purposes of obtaining current information regarding assets of the inmate.

(c) Every inmate who is given a form by the department shall complete the form or provide for completion of the form and the inmate shall swear or affirm under oath that to the best of his/her knowledge the information provided is complete and accurate.

(d) The department shall develop the form provided for under this section not later than thirty (30) days after the effective date of this act.

SECTION 5. The department shall develop a report on each inmate who is required to complete a form in accordance with the provisions of Section 4 of this act, together with all other information available on the assets of the inmate and an estimate of the total cost of care for that inmate.

SECTION 6.

(a) The department shall investigate or cause to be investigated each report furnished pursuant to Section 5.

(b) If the department, upon completing the investigation, has good cause to believe that an inmate has sufficient assets to recover not less than ten percent (10%) of the estimated cost of the inmate for two (2) years or ten percent (10%) of the cost of care of the inmate, whichever is less, the commissioner shall forward reports concerning such inmates to the Attorney General and Reporter for appropriate action. The Attorney General shall seek to secure reimbursement for the expense of the State of Tennessee for the cost of care of that inmate.

(c) Not more than ninety percent (90%) of the value of the assets of the inmate may be used for purposes of securing costs and reimbursement under this act.

SECTION 7.

(a) An inmate shall fully cooperate with the State by providing complete financial information for purposes under this act.

(b) The failure of an inmate to fully cooperate, as provided in subsection 7(a), may be considered by the board of paroles for purposes of a parole determination.

SECTION 8.

(a) The circuit court shall have exclusive jurisdiction over all proceedings under this act. The Attorney General may file a complaint in the circuit court of the county from which an inmate was sentenced, stating that the person is or has been an inmate in a state correctional facility, that there is good cause to believe that the inmate has assets, and petition that the assets be used to reimburse the State for the expenses incurred or to be incurred, or both, by the State for the costs of care of the person as an inmate.

(b) Upon the filing of the complaint under subsection (a), the court shall issue an order to show cause why the petition should not be granted. The complaint and order shall be served upon the inmate personally or, if the inmate is confined in a state correctional facility, by registered mail addressed to the inmate in care of the chief administrator of the state correctional facility where the inmate is housed, at least thirty (30) days before the date of hearing on the complaint and order.

(c) At the time of the hearing on the complaint and order, if it appears that the inmate has any assets which ought to be subjected to the claim of the State under this act, the court shall issue an order requiring any person, corporation, or other legal entity possessing or having custody of those assets to appropriate and apply the assets or a portion thereof toward reimbursing the State as provided for under this act. Such reimbursement is subject to payments for court-ordered child support and arrearages before the State may apply any amounts recovered for reimbursement of its expenses, including the costs of any investigations.

(d) The amount of reimbursement under this act shall not be in excess of the per diem cost of care for maintaining inmates in the state correctional facility in which the inmate is housed.

(e) At the hearing on the complaint and order and before entering any order on behalf of the State against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependants and any moral obligation to support dependants to whom the defendant is providing or has in fact provided support. At the hearing the inmate shall have the opportunity to put on proof to show why such an order should not be entered or the existence of appropriate obligations which should limit application of the order.

(f) If the person, corporation, or other legal entity shall neglect or refuse to comply with an order under subsection 8(c), the court shall order the person, corporation, or their legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation or other legal entity should not be considered in contempt of court.

(g) If, in the opinion of the court, the assets of the inmate are sufficient to pay the cost of the proceedings under this act, the assets shall be liable for those costs upon order of the court.

(h) The State may recover the expenses incurred or to be incurred, or both, by the State for the cost of care of the inmate during the entire period or periods the person is an inmate in a state correctional facility.

SECTION 9.

(a) Except as provided in subsection 8(c), in seeking to secure reimbursement under this act, the Attorney General may use any remedy, interim order, or enforcement procedure allowed by law of court rule excluding an ex parte restraining order to restrain the inmate or any other person or legal entity in possession or having custody of the estate of the inmate from disposing of certain property pending a hearing or an order to show cause why the particular property should not be applied to reimburse the State as provided for under this act.

With respect to any lien or similar interest or encumbrance upon real property which is asserted hereunder, such lien or similar interest or encumbrance shall be effective only when the party claiming the benefit of same causes a notice thereof to be filed in the office of the register of deeds of the county in which the property lies, and such lien or similar interest or encumbrance shall be second to liens of the state, county and municipality for taxes, any lien of the county for special assessments, and any valid lien, right or interest in such property duly recorded or duly perfected by filing prior to the filing of such notice. Such notice shall identify the owner of record of the real property, contain the property address, describe the property sufficiently to identify it, and recite the amount of the obligation secured by the lien.

(b) To protect and maintain assets pending resolution of an action under this act, the court, upon request, may appoint a receiver.

(c) The Attorney General or a prosecuting attorney shall not enforce any judgment obtained under this act by means of execution against the homestead of the inmate. The Attorney General of this State shall enforce the provision of this act except that the Attorney General may request the prosecuting attorney of the county in which the inmate was sentenced or the prosecuting attorney of the county in which any asset of an inmate is located to make an investigation or assist in legal proceeding under this act.

SECTION 10. (a) The sentencing judge, the sheriff of the county, the warden of the state correctional facility, and the State Treasurer shall furnish to the Attorney General or prosecuting attorney all information and assistance possible to enable the Attorney General or prosecuting attorney to secure reimbursement for the State under this act.

(b) The costs of any investigations under this act shall be paid from the reimbursements secured under this act and the balance of the reimbursements shall be credited to the general fund of the State to be available for general fund purposes.

(c) The State Treasurer may determine the amount due the State in cases under this act and render statements thereof, and such sworn statements shall be considered prima facie evidence of the amount due.

SECTION 12. The Department of Correction, the Attorney General and Reporter, District Attorneys General, the Department of Human Services, and the Department of Labor shall all cooperate and share information to the extent not prohibited by law concerning assets, workers' compensation settlements, and child support

obligations of inmates in order that to the maximum extent feasible that inmates should satisfy existing child support obligations, including arrearages, before the State receives reimbursement, including the costs of any investigations, pursuant to this act.

SECTION 13. Notwithstanding the provisions of Tennessee Code Annotated, Section 50-6-223(b), a court may assign up to fifty percent (50%) of workers' compensation made by periodic payments to pay an arrearage owed by an inmate who is confined in the custody of the Department of Correction; provided that such assignment is administered in accordance with Tennessee Code Annotated, Section 50-2-105.


SECTION 14. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: April 29, 1998


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 18th day of May 1998


DON SUNDQUIST, GOVERNOR